

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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UNITED STATES OF AMERICA	*	Houston, Texas
	*	March 20, 2012
VS.	*	
	*	2:03 p.m. - 2:15 p.m.
JOSE MAUEL MENDOZA-HERNANDEZ	*	NO. 12-CR-132
ISAURA HERNANDEZ-LOZANO	*	NO. 12-CR-136
FRANKLIN PERALTA-MARTINEZ	*	NO. 12-CR-144
VICENTE DIAZ-MARCELO	*	NO. 12-CR-155

* * * * *

INITIAL APPEARANCE / ARRAIGNMENT

BEFORE THE HONORABLE NANCY K. JOHNSON
UNITED STATES MAGISTRATE JUDGE

* * * * *

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General Order 94-15, United States
District Court, Southern District of Texas

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6 Houston, Texas 77208-1129

7 For Defendants:

8 MR. GERARDO HARRY GONZALES
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14 Electronic Recorder:

15 EBONEE MATHIS

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1 **P R O C E E D I N G S**2 **2:02 p.m. - March 20, 2012**3 THE COURT: All right, good afternoon,
4 everyone. Please be seated.5 All right, this is the United District
6 Court for the Southern District of Texas. I'm
7 Magistrate Judge Nancy Johnson.8 Let me call for initial appearance,
9 United States vs. Jose Manuel Mendoza-Hernandez, Isaura
10 Hernandez-Lozano, Franklin Peralta-Martinez, and Vicente
11 Diaz-Marcelo.12 MR. JENKINS: Good afternoon, Your Honor, Hays
13 Jenkins for the United States.14 MR. GONZALES: Harry Gonzales for the
15 defendants, Your Honor.16 THE COURT: Mr. Diaz, stand on the end next to
17 Mr. Gonzales, because I have you all, I think -- I'm
18 trying to get you organized -- in an order at least I
19 understand.20 Sir, on the far right-hand side, you are
21 Mr. Mendoza-Hernandez; correct?

22 DEFENDANT MENDOZA-HERNANDEZ: Yes.

23 THE COURT: And then we have Mr. [sic]
24 Hernandez-Lozano.

25 DEFENDANT HERNANDEZ-LOZANO: Yes.

1 THE COURT: And then Mr. Peralta-Martinez?

2 Yes.

3 And then on the end, Mr. Diaz-Marcelo.

4 DEFENDANT DIAZ-MARCELO: Marcelo.

5 All right, good afternoon. Have each of
6 you received a copy of the indictment in your case?

7 DEFENDANT MENDOZA-HERNANDEZ: Yes.

8 DEFENDANT HERNANDEZ-LOZANO: Yes.

9 DEFENDANT PERALTA-MARTINEZ: Yes.

10 DEFENDANT DIAZ-MARCELO: Yes.

11 THE COURT: All right, let's go over the
12 charge.

13 Mr. Mendoza-Hernandez, you are charged with
14 illegally re-entering the United States after you were
15 convicted of a felony and then deported. The penalty
16 range that you face is up to 10 years in prison and up
17 to a \$250,000 fine.

18 Do you understand the charge?

19 DEFENDANT MENDOZA-HERNANDEZ: I don't have all
20 of that money to pay with.

21 THE COURT: That is not the point. The point
22 is that that is a potential fine. The point is do you
23 understand the charge?

24 DEFENDANT MENDOZA-HERNANDEZ: Yes, but I don't
25 have any money.

1 THE COURT: That is noted.

2 Next, Mr.[sic] Hernandez-Lozano, you are
3 charged with illegally re-entering the United States
4 after you were convicted of an aggravated felony and
5 then deported. The penalty range that you face is up to
6 20 years in prison and up to a \$250,000 fine.

7 Do you understand the charge?

8 DEFENDANT HERNANDEZ-LOZANO: Yes.

9 THE COURT: Mr. Peralta-Martinez, you are
10 charged with illegally re-entering the United States
11 after you were convicted of an aggravated felony and
12 then deported. The penalty range that you face is up to
13 20 years in prison and up to a \$250,000 fine.

14 Do you understand the charge?

15 DEFENDANT PERALTA-MARTINEZ: Yes.

16 THE COURT: And Mr. Diaz-Marcelo, you are
17 charged with illegally re-entering the United States
18 after you were deported. The penalty range that you
19 face is up to two years in prison and up to a \$250,000
20 fine.

21 Do you understand the charge?

22 DEFENDANT DIAZ-MARCELO: Yes.

23 THE COURT: In addition to the penalties I've
24 just stated, Mr. Diaz, you face up to one year
25 supervised release, the other three of you face up to

1 three years supervised release, and a \$100 special
2 assessment.

3 Now, with respect to your charge, each of
4 you has the right to remain silent and not make any
5 statement. If you choose to make a statement, it can be
6 used against you. Do each of you understand that?

7 Mr. Mendoza-Hernandez, do you understand?

8 DEFENDANT MENDOZA-HERNANDEZ: Yes.

9 THE COURT: Isaura Hernandez-Lozano, do you
10 understand?

11 DEFENDANT HERNANDEZ-LOZANO: Yes.

12 THE COURT: Mr. Peralta-Martinez, do you
13 understand?

14 DEFENDANT PERALTA-MARTINEZ: Yes.

15 THE COURT: And Mr. Diaz-Marcelo, do you
16 understand?

17 DEFENDANT DIAZ-MARCELO: Yes.

18 THE COURT: Each of you also has the right to
19 be represented by an attorney at all stages of this
20 criminal proceeding. If you cannot afford an attorney,
21 one will be appointed for you. I have reviewed your
22 financial information, I have found that each of you
23 qualifies for appointed counsel, and I have appointed
24 Mr. Gonzales to represent each of you in your cases.

25 Now, Mr. Jenkins, what is your motion on

1 bond?

2 MR. JENKINS: Your Honor, may it please the
3 Court. We would move to detain each of the individuals
4 before this Court. None have legal status in the United
5 States, each presents a flight risk, and detainees have
6 been filed in each case.

7 THE COURT: Mr. Gonzales, what do your clients
8 wish to do?

9 MR. GONZALES: They are awaiting the detention
10 hearing, Your Honor.

11 THE COURT: And have all the forms been signed?

12 MR. GONZALES: Yes, they have.

13 THE COURT: Very well. Then with respect to
14 all four of you, the Court finds that you present a
15 serious risk of flight and you will be detained in
16 Marshal custody while that matter is pending. I'm sure
17 Mr. Gonzales explained to you the effect of the
18 detainer. That is, even if you could convince me that
19 you had ties to the community and that you were
20 bondable, you would be released from this courthouse
21 into that ICE detainer where you would be held in
22 custody and not get a bond; and importantly, you would
23 not get credit for time served. So, by waiving the
24 detention hearing and going into Marshal custody, you
25 have opted for the better of two bad choices.

1 Now, Mr. Gonzales, are your clients ready
2 to proceed to arraignment?

3 MR. GONZALES: Yes, Your Honor.

4 THE COURT: Do you wish to waive formal reading
5 of the charges on their behalf?

6 MR. GONZALES: We do, Your Honor.

7 THE COURT: Then, as to you,

8 Mr. Mendoza-Hernandez, how do you plead, guilty or not
9 guilty?

10 DEFENDANT MENDOZA-HERNANDEZ: Not guilty.

11 THE COURT: A plea of "not guilty" will be
12 entered. Your case was assigned to Judge Gilmore. She
13 set your trial for May 29th at 1:30, and she asks that
14 you and the lawyers sign the form in front of you.

15 Mr. Jenkins, why don't you go first and
16 sign that form.

17 MR. JENKINS: Yes, Your Honor, I am signing it.

18 THE COURT: On the screen, on the tablet.

19 MR. JENKINS: Oh, on the tablet. I haven't
20 seen that hi-tech, Judge. Is this the pen you use for
21 this?

22 THE COURT: It is.

23 MR. JENKINS: Okay. I feel honored.

24 THE COURT: Just don't make any little happy
25 smiley faces. One of your colleagues did.

1 MR. JENKINS: Oh, really? He's been fired.

2 **[Pause]**

3 MR. GONZALES: It's been signed, Your Honor.

4 THE COURT: All right. Why don't we get the
5 copies distributed.

6 Sir, do you have any questions about
7 anything we have discussed?

8 DEFENDANT MENDOZA-HERNANDEZ: Yes, but I want
9 you to deport me as fast as possible because I'm never
10 going to be coming back.

11 THE COURT: Let me just say this. You probably
12 will be deported, but only after you have been
13 prosecuted and served your time for this particular
14 charge, all right? I'm sure you can talk to your lawyer
15 about that. All right, you may have a seat.

16 All right. Ms. Hernandez-Lozano, to the
17 charge, how do you plead, guilty or not guilty?

18 DEFENDANT HERNANDEZ-LOZANO: Not guilty.

19 THE COURT: A "not guilty" plea will be
20 entered. Your case was assigned to Judge Ellison. He
21 has set your trial for May 7 at 9:00, along with other
22 dates, and he asks that you and the lawyers sign the
23 form.

24 **[Pause]**

25 MR. GONZALES: It's been signed, Your Honor.

1 THE COURT: All right. Do you have any
2 questions about anything we've discussed?

3 DEFENDANT HERNANDEZ-LOZANO: No. I will get
4 in touch with the attorney so that he will lead me.

5 THE COURT: Very well. All right. Thank you.

6 Mr. Peralta-Martinez, to the charge, how do
7 you plead, guilty or not guilty?

8 DEFENDANT PERALTA-MARTINEZ: Not guilty.

9 THE COURT: A "not guilty" plea will be
10 entered. Your case was assigned to Judge Hittner. He's
11 set May 22nd at 10:00 for your trial, along with other
12 dates, and he asks that you and the lawyer sign the
13 form.

14 **[Pause]**

15 MR. GONZALES: It's been signed, Your Honor.

16 THE COURT: All right, sir, do you have any
17 questions about anything we've discussed?

18 DEFENDANT PERALTA-MARTINEZ: No, thank you.

19 THE COURT: All right. Then you may have a
20 seat. Good luck to you.

21 Mr. Diaz, to the charge, how do you plead,
22 guilty or not guilty?

23 DEFENDANT DIAZ-MARCELO: Not guilty.

24 THE COURT: A "not guilty" plea will be
25 entered. Your case was assigned to Judge Ellison. He's

1 set your trial for May 7 at 9:00 a.m., and he asks that
2 you and the lawyer sign the form.

3 **[Pause]**

4 MR. GONZALES: It's been signed, Your Honor.

5 THE COURT: All right. Sir, do you have any
6 questions about anything we've discussed?

7 DEFENDANT DIAZ-MARCELO: No.

8 THE COURT: Then you may have a seat. Good
9 luck to you.

10 MR. GONZALES: May I be excused, Your Honor?

11 THE COURT: You may be excused.

12 MR. GONZALES: Thank you.

13 THE COURT: Thank you for coming.

14 **[2:15 p.m. - Proceedings adjourned]**

15

16 C E R T I F I C A T I O N

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18 I certify that the foregoing is a correct
19 transcript of the electronic sound recording of the
20 proceedings in the above-entitled matter.

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22

23 /s/ Gwen Reed

24 9-9-12

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